

Message

From: Chris Bliley [cbliley@growthenergy.org]
Sent: 4/7/2017 5:38:04 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Connection

Mandy,

Just circling back on this. Let me know when you and whomever else from the policy or legal side may have some time to discuss with some of us on the RVP issue – happy to talk by phone (**Ex. 6**) in the short term if it is easier. Thanks.

Chris

From: Chris Bliley
Sent: Friday, March 31, 2017 4:43 PM
To: 'Brown, Byron' <brown.byron@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Connection

Thanks Byron, and Mandy, hope EPA HQ is treating you well. Not new issues to you, but thought it would be good to come in and talk RVP with you and whomever else from the policy staff that made sense. We've met with the air office and OGC many times, but wanted to touch base with you all as well. Let me know when you might have some time in the next week or two. Thanks.

Chris

From: Brown, Byron [mailto:brown.byron@epa.gov]
Sent: Friday, March 31, 2017 12:34 PM
To: Chris Bliley <cbliley@growthenergy.org>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Connection

I think you already know each other, but Chris used to be head of OCIR in the Bush Administration and now works for Growth Energy. Mandy came over from the EPW Committee and is serving as senior advisor to the Administrator for air and radiation. Chris wanted to chat about the RVP issue.

Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

Message

From: Andy O'Hare [aohare@tfi.org]
Sent: 8/2/2017 4:42:53 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Mtg Request

Bryon,

Good afternoon. I am reaching out to schedule a meeting on the CERCLA 108(b) proposal. I understand you will be meeting next week with my colleagues at NMA. My contact information is below.

Thank you,
Andy O'Hare

Andrew T. O'Hare, CAE
Vice President, Public Policy
The Fertilizer Institute
425 Third Street, SW
Suite 950
Washington, DC 20024

Ex. 6 (work)
(cell)
aohare@tfi.org

Message

From: Keniece Barbee [kbarbee@corn.org]
Sent: 3/13/2017 4:21:08 PM
To: Hale, Michelle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cb99f5247ab8412fa017133839301fee-Hale, Miche]
CC: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: RE: Byron Brown

Hi Michelle ,

I have updates (as I know them) in red below.

Would there be a recent Bio on Byron that I could give to those attending the meeting?

Regards,

Keniece Barbee

Assistant to President and C.E.O.

Corn Refiners Association



1701 Pennsylvania Avenue, N.W.

Suite 950

Washington, DC 20006

Main: (202) 331-1634

Direct: Ex. 6

Fax: (202) 331-2054

www.corn.org

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Hale, Michelle [mailto:hale.michelle@epa.gov]
Sent: Monday, March 13, 2017 12:11 PM
To: Keniece Barbee <kbarbee@corn.org>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Byron Brown

Location: Alm Room of Suite 3000

These are the attendees that I have for the meeting set for 3:45 today:

Chris Novak, CEO National Corn Growers
Steve Censky, CEO American Soybean
Jay Vroom, CEO CropLife
Chuck Conner, CEO Coops Council

Dale Moore, Exec. Director, American Farm Bureau Federation
John Bode, CEO Corn Refiners Association (Kyle Harris to accompany John)
Denise Bode, Partner Michael Best Strategies
Newtrient (representing dairy industry waste issues) Rep
National Cattlemen's Beef Association Rep, I don't believe they will be sending anyone
National Pork Producers Council Rep, Michael Formica
National Chicken Council Rep

Re: Ag issues and statements of key issues which they have developed with a shared set objectives for the meeting.

From: Keniece Barbee [mailto:kbarbee@corn.org]
Sent: Monday, March 13, 2017 11:50 AM
To: Hale, Michelle <hale.michelle@epa.gov>
Subject: RE: Byron Brown

Thank you Michelle. One last quick question and then I hope to be out of your way! Will the meeting with Byron take place today in Suite 3000 and do you need a list of attendees?

Regards,

Keniece Barbee
Assistant to President and C.E.O.
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Main: (202) 331-1634
Direct: Ex. 6
Fax: (202) 331-2054
www.corn.org

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Hale, Michelle [mailto:hale.michelle@epa.gov]
Sent: Monday, March 13, 2017 11:47 AM
To: Keniece Barbee <kbarbee@corn.org>
Subject: RE: Byron Brown

Deputy Chief of Staff for Policy

From: Keniece Barbee [<mailto:kbarbee@corn.org>]
Sent: Monday, March 13, 2017 11:35 AM
To: Hale, Michelle <hale.michelle@epa.gov>
Subject: Byron Brown

Hi Michelle,

Would you mind sending me Byron Brown's title please? Thank you!

Regards,

Keniece Barbee
Assistant to President and C.E.O.
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Main: (202) 331-1634
Direct: **Ex. 6**
Fax: (202) 331-2054
www.corn.org

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

Message

From: John Bode [JBode@corn.org]
Sent: 3/21/2017 8:58:37 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
CC: Kyle Harris [kharris@corn.org]
Subject: Biogenic CO2
Attachments: Biogenic CO2 Coalition - 1-pg Overview (3-13-17).pdf

Byron,

Thanks again for meeting with ag leaders last Monday, March 13th. From our perspective, it was a great meeting.

This is a reminder of our interest in a meeting of the parties regarding the Biogenic CO2 Coalition's legal challenge to EPA's Finding that "Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare." A motion to govern future proceedings is due by March 30, 2017, though we would be open to seeking a delay. We are challenging the Obama Greenhouse Gas Regulations' assertion that EPA is not required to consider the "source" of feedstocks (whether fossil or biomass) that result in emissions and that biogenic emissions have the same effect on the atmosphere as fossil fuels, despite an absence of mention of biogenic CO2 in the Endangerment Finding.

Please advise if and when appropriate officials of EPA would be available to discuss this and, perhaps, our two other challenges of EPA rules in connection with treatment of biogenic CO2 under the greenhouse gas endangerment finding.

Thanks for your consideration.



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

BIOGENIC CO₂ COALITION

Members

American Bakers
Association

American Farm
Bureau Federation

Corn Refiners
Association

Enginuity Worldwide

National Corn
Growers Association

National Cotton
Council of America

National Cottonseed
Products Association

National Oilseed
Processors
Association

North American
Millers' Association

The Biogenic CO₂ Coalition supports science-based recognition that agricultural biogenic CO₂ emissions are not harmful greenhouse gases and opposes EPA's overreach in regulating sustainability on farms.

Agriculture is key to the 21st century bioeconomy that includes feeding America and the expansion of bioproducts such as bioplastics, composites, and intermediates made from corn, oilseeds and other agricultural feedstocks. According to the federal government, the bioeconomy in 2013 was valued at \$369 billion, provided 4 million American jobs, and was the leading source of domestic renewable energy. The bioeconomy is poised to expand exponentially with tremendous potential for economic development and job creation.

When farmers grow crops, they store carbon (CO₂) from the atmosphere, and when agricultural feedstocks are used for food, fuel and fiber, CO₂ simply returns to the atmosphere in a natural biogenic cycle.

Because of the benefits of agriculture as a renewable and sustainable resource, "biogenic" CO₂ emissions from agricultural feedstocks are universally accepted as carbon neutral by policymakers and scientists, yet:

- EPA is ignoring science and treating biogenic CO₂ emissions from farm products a "harmful pollutant" the same as fossil fuels.
- Practically speaking, EPA is putting a pollution tax on farm products, which imposes \$\$\$ millions of unnecessary costs on users of farm products (think bakeries, brewers and grain processors) and energy generators (for example, corn stover used for electricity).
- If farmers want to avoid EPA's pollution tax, EPA says it can dictate what "sustainable" farm practices can be used to produce food products or energy feedstocks, which will require tracking compliance of every bushel of corn, wheat, soy or cottonseed from its source.

Congress should stop EPA from ignoring science and blocking American agriculture and bioeconomy markets. Prompt relief is crucial, as development of the bioeconomy will not wait – if the U.S. does not move forward, other countries will dominate these markets.

Our Request:

Biogenic CO₂ emissions from the use or processing of agricultural crops should be recognized as *de minimis* or zero under the Clean Air Act; and

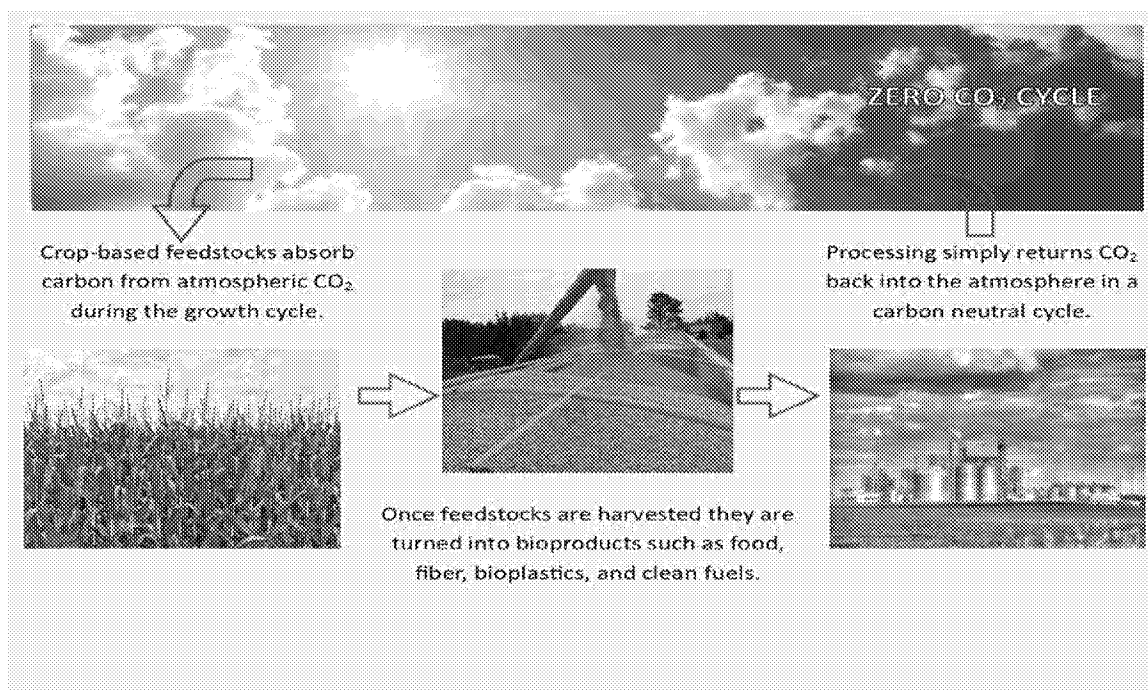
EPA should retract any attempt to regulate "sustainable" farming practices as a condition to feedstock eligibility under its Clean Power Plan (CPP) or Clean Air Act.

About the Biogenic CO₂ Coalition:

The Biogenic CO₂ Coalition, through its member national trade groups, represents a broad swath of agriculture and related sector constituents in advocating for sensible policies recognizing the carbon benefits of agricultural production and processing.

www.BiogenicCO2.org

Carbon Lifecycle of Agricultural Crops



American Bakers Association
www.americanbakers.org

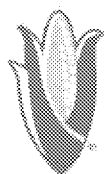


AMERICAN FARM BUREAU FEDERATION®



CORN REFINERS
ASSOCIATION

engenuity
worldwide



NATIONAL
CORN GROWERS
ASSOCIATION

**National
Cotton
Council**
OF AMERICA

NCPA

NATIONAL COTTONSEED PRODUCTS ASSOCIATION™
Established 1910

NOPA
NATIONAL OILSEED
PROCESSORS ASSOCIATION



www.BiogenicCO2.org

Message

From: Andy O'Hare [aohare@tfi.org]
Sent: 8/25/2017 1:34:46 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Earthworks Review
Attachments: TFI Review of Earthworks Comments 8-25-17.pdf

Byron,

Thank you again for meeting with my members and myself earlier this week on the CERCLA rulemaking.

As discussed, attached please find the TFI review of the comments prepared by Earthworks addressing phosphate mines. The comments rebut some of the incorrect claims made by Earthworks addressing a 2012 GAO report on phosphate mines.

Please reach out with any questions.

Regards,
Andy

Andrew T. O'Hare, CAE
Vice President, Public Policy
The Fertilizer Institute
425 Third Street, SW
Suite 950
Washington, DC 20024

Ex. 6 (work)
(cell)
aohare@tfi.org



The Fertilizer Institute

Nourish, Replenish, Grow

Andrew T. O'Hare

Vice President, Public Policy

August 25, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
www.regulations.gov

Re: Additional Comments of The Fertilizer Institute Regarding EPA's Proposed Rule Entitled "Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry," 82 Fed. Reg. 3,388 (Jan. 11, 2017); Docket ID No. EPA-HQ-SFUND-2015-0781

Dear Administrator Pruitt:

On July 11, 2017, The Fertilizer Institute ("TFI") submitted comments on the above-referenced Proposed Rule to explain why the potash and phosphate sectors should be excluded from the "high risk" classes of "hardrock" mining facilities ("HMFs") designated as subject to the rulemaking.¹ As set forth in extensive detail in TFI's comments last month, the Proposal Rule and accompanying administrative record clearly demonstrate that *both* the potash *and* the phosphate sectors should not be included in this rulemaking because:

- (1) facilities in these two sectors do not present anywhere close to the "highest level of risk of injury," and, therefore, do not require any further evidence of financial responsibility;
- (2) the facilities are thoroughly regulated by existing state and federal laws and regulations;
- (3) for phosphoric acid mineral processing facilities, any risks either already have been, or will be, addressed through EPA's National Enforcement Initiative under the Resource Conservation and Recovery Act ("RCRA") that requires operational changes, best management practices, and significant financial assurance; and,
- (4) for phosphate fertilizer manufacturing facilities, they are beyond the scope of this rulemaking as they are in the manufacturing sector, not the mining/mineral processing sector.

¹ "The Fertilizer Institute's Comments on The U.S. Environmental Protection Agency's Proposed Rule Entitled 'Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry,' 82 Fed. Reg. 3,388 (Jan. 11, 2017)" (July 11, 2017) (Dkt. EPA-HQ-SFUND-2017-0781-2633) (hereinafter, "TFI's 2017 Comments").

Capitol View
425 Third Street, S.W., Suite 950
Washington, DC 20024

202.515-2704
202.962.0577 fax
www.tfi.org

In reviewing comments submitted through mid-August, TFI has not identified any that advocate for the inclusion of the potash sector, or challenge excluding it.² Regarding the phosphate sector, TFI has only identified two comments that advocate for the inclusion of phosphate mining, and none that oppose excluding phosphoric acid manufacturing and phosphate fertilizer manufacturing.³ TFI's submission today responds to the assertions made by the two commenters advocating including phosphate mining in any final CERCLA § 108(b) rule.

STATEMENT OF INTEREST

TFI represents the nation's fertilizer industry including producers, importers, retailers, and wholesalers, and companies that provide services to the fertilizer industry. TFI members provide nutrients that nourish the nation's crops, helping to ensure a stable and reliable food supply. TFI's full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic information, and public communication programs.

Many TFI members operate, or rely on, mining operations producing raw materials for fertilizer production, including the mining of phosphate ore and potash, which are inappropriately identified in the Proposed Rule as "hardrock mining" that would be subject to EPA's forthcoming financial responsibility requirements pursuant to CERCLA § 108. TFI members also operate, or depend on, facilities which extract, beneficiate, or process phosphate ore and potash, and thus potentially fall within the scope of the Proposed Rule.

Specifically, TFI represents five of the seven companies (Mosaic Fertilizer, LLC, Nu-West Industries, Inc., PCS Phosphate Company, Inc., J.R. Simplot Co., and White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate – White Springs) with nine of the eleven phosphate mine sites in the United States that EPA has identified as subject to the rulemaking⁴ (Mosaic Fertilizer, LLC Four Corners, South Fort Meade, South Pasture, and Wingate Mines; Nu-West Industries, Inc. Rasmussen Ridge Mine; PCS Phosphate Company, Inc. Lee Creek Mine; J.R. Simplot Co. Smoky Canyon and Vernal Mines; and White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate – White Springs Swift Creek Mine).⁵ In addition, TFI represents two of the three companies⁶ (PCS Phosphate Company, Inc. and J.R. Simplot Co.) with three of the four identified co-located phosphate mines/mineral processing facilities (PCS Phosphate Company, Inc. Lee

² See TFI's 2017 Comments at 43-53.

³ See *id.* at 9-42.

⁴ See EPA, "CERCLA 108(b) Financial Responsibility Formula for Hardrock Mining Facilities - Background Document (Peer Review Draft)," at E-2 to E-18 (Sept. 19, 2016) (Dkt. EPA-HQ-SFUND-2015-0781-0500) (hereinafter, "Financial Responsibility Document"). TFI does not represent Manko Co. and P4 Production, LLC/Monsanto Co.

⁵ TFI is simply restating the Agency's position regarding the phosphate mines that will be subject to the rulemaking and neither endorses nor agrees with EPA's designations.

⁶ See Financial Responsibility Document at E-2 to E-18. TFI does not represent P4Production/Monsanto Co. - Monsanto Chemical Co.

Creek/Aurora, J.R. Simplot Co. Smoky Canyon/Don, and J.R. Simplot Co. Vernal/Rock Springs).⁷ TFI also represents one of the two “stand-alone” phosphate fertilizer manufacturing facilities in the United States that are subject to the rulemaking⁸ (Mosaic Fertilizer, LLC Uncle Sam).⁹ Additionally, TFI represents three of the four companies¹⁰ (Compass Minerals, Intrepid Potash, and Mosaic Potash Carlsbad Inc.) with active potash production facilities in the United States.¹¹

Based on the operations of its members, and its significant input to date regarding this rulemaking, TFI has a substantial interest in the Proposed Rule.

Like the Proposed Rule and Administrative Record, the Two Comments Advocating for the Inclusion of Phosphate Mining in Any Final CERCLA § 108(b) Rule Fail to Demonstrate That Phosphate Mining Represents a “High Risk”

TFI identified two comments advocating for the inclusion of phosphate mining in any final “hardrock” mining financial responsibility rule: (1) Earthworks and a number of other non-governmental organizations;¹² and (2) Tribal Caucus of the Region 10 Tribal Operations Committee (“RTOC”).¹³ As will be explained below, nothing in the comments alters the conclusion that phosphate mining is not a “high risk” activity that warrants inclusion of this sector in any final CERCLA § 108(b) rule for HMFs.

The Earthworks’ 2017 Comments rely extensively on a 2012 U.S. Government Accountability Office (“GAO”) report regarding phosphate mining on federal lands in Idaho.¹⁴ Those comments simply cherry-pick certain statements from the “Highlights” section of the Report.¹⁵ They fail to respond to, let alone even recognize, the important facts in the 2012 GAO Phosphate Mining Report regarding: (1) meaningful modifications made to federal oversight programs since the discovery of selenium discharges in 1996; (2) substantial efforts by the federal agencies and the owners and operators of the phosphate mines to characterize and address the discharges; (3) increased financial assurance to cover these activities (including reimbursement of

⁷ TFI is simply restating the Agency’s position regarding the co-located phosphate mines/mineral processing facilities that will be subject to the rulemaking and neither endorses nor agrees with EPA’s designations.

⁸ See Financial Responsibility Document at E-2 to E-18. The Mississippi Phosphates facility is no longer operational, and is not a TFI member.

⁹ TFI is simply restating the Agency’s position regarding the “stand-alone” phosphate fertilizer manufacturing facilities that will be subject to the rulemaking and neither endorses nor agrees with EPA’s designations.

¹⁰ See Financial Responsibility Document at E-2 to E-18. TFI does not represent Micro-Lite, LLC.

¹¹ TFI is simply restating the Agency’s position regarding the potash production facilities that will be subject to the rulemaking and neither endorses nor agrees with EPA’s designations.

¹² Letter from Bonnie Gestrung, Earthworks, *et al.*, to Scott Pruitt, EPA (July 10, 2017) (Dkt. EPA-HQ-SFUND-2015-0781-2739) (hereinafter, “Earthworks’ 2017 Comments”).

¹³ Letter from William J. Maines, Region 10 RTOC, to Scott Pruitt, EPA (July 11, 2017) (Dkt. EPA-HQ-SFUND-2015-0781-2729) (hereinafter, “RTOC’s 2017 Comments”).

¹⁴ See GAO, “Phosphate Mining: Oversight Has Strengthened, but Financial Assurances and Coordination Still Need Improvement” (May 2012), available at <http://www.gao.gov/products/GAO-12-505> (hereinafter, “2012 GAO Phosphate Mining Report”).

¹⁵ See Earthworks’ 2017 Comments at 15-16.

the responsible agency(ies) oversight costs); and, (4) the key fact that the discharges resulted from historical, not current, mining practices.

The 2012 GAO Phosphate Mining Report was developed in response to congressional inquiries regarding selenium discharges at Idaho phosphate mines¹⁶ and examines: (1) federal oversight of mining operations and changes since the discovery of selenium discharges in 1996; (2) actions taken by federal authorities and mine operators to address the impacts; and, (3) types and amount of financial assurance and the ability of the financial assurances to cover future cleanup costs.¹⁷ Given the scope of these inquiries, GAO did not seek to evaluate the substantial distinctions that exist between historical and modern mining practices, even though GAO recognized the potentially significant risks raised by historical mining practices no longer used.¹⁸ The GAO identified three active phosphate mines with selenium discharges that are identified by EPA as subject to the CERCLA § 108(b) rulemaking: (1) the J.R. Simplot Co. Smoky Canyon Mine; (2) the P4 Production/Monsanto South Rasmussen Mine; and, (3) the Nu-West Industries, Inc. North Rasmussen Ridge Mine.

As to the first study objective (federal oversight of mining operations and changes since the discovery of selenium discharges in 1996), the GAO concluded that the Bureau of Land Management (“BLM”) and U.S. Forest Service (“USFS”), the two federal agencies with primary authority over mining on federal lands, have undertaken a number of actions to strengthen their oversight of phosphate mining “to reduce the likelihood that new and ongoing mines will result in additional sources of selenium contamination and improve the management of ongoing CERCLA cleanups.”¹⁹ An example of these efforts is the requirement for more detailed environmental analyses for approving mine plans, including the identification of potential selenium sources, evaluation of how the phosphate mines would affect surface water and groundwater, and an evaluation of engineering models for options to prevent or mitigate any selenium impacts.²⁰

Another example of changes to federal oversight to address potential selenium discharges is a requirement for more comprehensive mine plans, including modifying mining practices, some of which historically were required by the federal agencies with oversight of the operations.²¹ For example, historical requirements dictated the use of center overburden shale (the layer that typically contains higher selenium concentrations) for cap cover materials, based on the thought that this material would be best for revegetation of the area. However, current requirements specify that overburden containing higher concentrations of selenium must not come in contact with the surface to minimize the potential for selenium discharges to the environment, effectively addressing this concern regarding historical practices.

¹⁶ Selenium is a naturally occurring metal within the mineral host matrix, with selenium concentrations varying regionally and found in the Western United States phosphate reserves.

¹⁷ 2012 GAO Phosphate Mining Report at 4.

¹⁸ *Id.* at 8-10 (discussing the risks raised by historical overburden management practices).

¹⁹ *Id.* at 19.

²⁰ *Id.*

²¹ *Id.* at 20.

In addition, and subsequent to the 2012 GAO Phosphate Mining Report, practices continue to evolve. As examples, owners and operators of phosphate mines in Idaho employ a number of other practices to prevent selenium discharges, including:

- (1) preserving available growth resources for reclamation by storing the materials in special growth media areas;
- (2) diverting “clean” run-on water around disturbance areas by using a network of diversion berms and ditches to prevent contact with mine overburden rock and to maintain a supply of clean surface water to wetlands and drainages located downgradient of the mine;
- (3) collecting surface water runoff from disturbance areas by using perimeter ditches, berms or trenches that convey potentially impacted water from ODAs to collection ponds;
- (4) characterizing, segregating and stockpiling cap and cover materials to ensure that higher selenium containing materials are placed deeper in the mine pit to minimize the chance of surface contamination, and using low selenium-containing material with low permeability for infiltration for the cap and cover; and,
- (5) using low selenium-containing material for haul roads and road grades of 10% or greater to help maintain clean water flow in existing drainages.

These practices for existing and new phosphate mines in Idaho will continue to improve the management of any naturally occurring selenium present in the host matrix and are included in permit obligations, best management practices, and reclamation practices designed to prevent the potential for selenium discharges.

Finally, GAO correctly observed that BLM, since 2001, requires full-cost financial assurances for new mines.²² These financial assurances are based on the entire cost of reclaiming a given mine site, including the costs of hiring contractors and covering oversight and overhead costs to perform the work.²³

As to the second study objective (actions taken by federal authorities and mine operators to address the impacts), the GAO correctly notes that area-wide investigations began in 2001, under the lead of the Idaho Department of Environmental Quality (“IDEQ”), and the response costs are being reimbursed by the phosphate mine operators under the terms of a settlement agreement.²⁴ The area-wide investigation costs to be reimbursed are as follows: (1) IDEQ – \$5,000,000 over 10 years; (2) EPA – all direct and indirect costs; (3) USFS – all direct and indirect costs; and,

²² *Id.* at 20-21.

²³ *Id.* at 20.

²⁴ *Id.* at 28.

(4) Shoshone-Bannock Tribes – \$65,000/annually for three years.²⁵ Further, GAO reports site-specific investigations commencing in 1998 and continuing as of March 2012.²⁶

In addition to the general information in the 2012 GAO Phosphate Mining Report, TFI is aware of specific efforts to address or resolve potential environmental risks at active phosphate mines. For example, at the J.R. Simplot Co. Smoky Canyon Mine/Pole Canyon Overburden Disposal Area (“ODA”), during 2006-2008, Simplot implemented a removal action with USFS oversight that included constructing (1) a pipeline to convey diverted Pole Canyon Creek flow around the ODA, (2) an infiltration basin to direct remaining Pole Canyon Creek flow into the Wells Formation aquifer upstream of the ODA, and (3) a run-on ditch adjacent to the northern edge of the ODA to direct run-on from the adjacent slopes into Pole Canyon Creek below the ODA.²⁷

Second, since the 2012 GAO Phosphate Mining Report, and based on a January 2013 removal action memorandum signed by the USFS, Simplot agreed to (1) re-grade portions of the ODA to reduce the potential for ponding of infiltration, (2) install a cover of three feet of Dinwoody over a minimum of two feet of chert/limestone to reduce infiltration into the ODA and to prevent exposure to selenium in soil and vegetation, (3) install stormwater run-on/run-off controls to convey water off the ODA, and (4) revegetate the Dinwoody surface using native non-selenium-accumulation species to control erosion.²⁸ These activities have been completed and are expected to reduce water entering the ODA by 99%,²⁹ thereby allowing the selenium concentrations in down-stream groundwater and surface water to achieve the appropriate cleanup or water quality standards through monitored natural attenuation. Based on settlements with the applicable oversight agencies, including EPA, USFS, IDEQ, and the Shoshone-Bannock Tribes, Simplot agreed to reimburse the agencies for oversight costs associated with this work.³⁰

Further, at the P4 Production/Monsanto South Rasmussen Mine ODA, P4 Production/Monsanto entered into a Consent Decree with the United States in 2011. In that Decree, P4 agreed to pay a \$1.4 million civil penalty, spend approximately \$875,000 on

²⁵ See Letter from Alan L. Prouty, J.R. Simplot Co., to U.S. Environmental Protection Agency at 5 (July 11, 2017) (Dkt. EPA-HQ-SFUND-2015-0781-2782) (hereinafter, “Simplot’s 2017 Comments”).

²⁶ 2012 GAO Phosphate Mining Report at 28.

²⁷ See USFS Website re: “Pole Canyon Overburden Disposal Area” (last visited May 11, 2017), <https://www.fs.usda.gov/detail/ctnf/news-events/?cid=STELPRD3834756>; see also Simplot’s 2017 Comments at 7. Notably, while Earthworks discusses selenium impacts at the ODA, it fails to mention any of the publicly-available information discussing the actions taken by the J.R. Simplot Co. to respond to, and address, the discharges. See Earthworks’ 2017 Comments at 16-19.

²⁸ *Id.*

²⁹ See USFS Website re: “Pole Canyon Overburden Disposal Area” (last visited May 11, 2017), <https://www.fs.usda.gov/detail/ctnf/news-events/?cid=STELPRD3834756>.

³⁰ See, e.g., *In re Smoky Canyon Phosphate Mine*, “Administrative Settlement Agreement and Order on Consent/Consent Order For Non-Time-Critical Removal Action,” at §§ XXV and XXVI (2006); *In re Smoky Canyon Phosphate Mine*, “Administrative Settlement Agreement and Order on Consent/Consent Order For Non-Time-Critical Removal Action,” at §§ XXIII, XXIV, and XXV (2013); see also Simplot’s 2017 Comments at 7 (identifying over \$7.5 million in reimbursed oversight costs from 2003 – 2017).

monitoring, and prevent selenium and other heavy metals from entering local waters.³¹ Next, in 2012, P4 Production/Monsanto entered into a Consent Order with IDEQ to address groundwater concerns at the ODA.³² According to publicly available information, a source characterization report for the ODA was completed in August 2013, the ODA remedial action plan was completed and new monitoring wells were installed in 2015, and work on the remedial design and implementation plan are underway.³³ Like the Simplot settlements, the P4 Production/Monsanto settlement with IDEQ requires reimbursement of agency oversight costs.³⁴

Finally, for GAO's third study objective (types and amount of financial assurance and the ability of the financial assurances to cover future cleanup costs), it concluded that approximately \$91 million in financial assurance was being held to cover mine reclamation and related activities, and site assessment and remediation activities.³⁵ Only about five percent of this amount was covered by corporate guarantees.³⁶ As of 2017, and for only two active phosphate mines in Idaho owned by TFI members, financial assurance requirements totaled over \$154 million. The vast majority of these requirements are in forms other than corporate guarantees.

While Earthworks is quick to cherry-pick and emphasize limited passages from the 2012 GAO Phosphate Mining Report to assert that phosphate mining should be included in any final CERCLA § 108(b) rule, Earthworks fails to recognize that federal regulatory oversight has substantially broadened and increased since the selenium discharges were identified in 1996. Similarly, the underlying facts belie Earthworks' position: The discharges at issue result from historical mining practices no longer used today; only three of the 16 mines identified with selenium discharges are identified by EPA as subject to the rulemaking; the owners and operators of these mines are addressing the selenium discharges; oversight agencies are being reimbursed for their oversight costs; and financial assurance is in place to cover the work being done. Thus, nothing in the Earthworks' 2017 Comments refutes TFI's position that phosphate mines are not "high risk" HMFs and, therefore, should not be included in any final CERCLA rule.³⁷

The RTOC's 2017 Comments encouraging the inclusion of phosphate mining are sparse, comprising only five lines and containing conclusory and unsupported statements such as

³¹ See U.S. Department to Justice ("DOJ"), "Idaho Mining Company Agrees to Pay \$1.4 Million Penalty to Settle Alleged Clean Water Act Violations" (Apr. 20, 2011), *available at* <https://www.justice.gov/opa/pr/idaho-mining-company-agrees-pay-14-million-penalty-settle-alleged-clean-water-act-violations>; *see also* *United States v. P4 Production, LLC*, No. 4:11-cv-00166-BLW, "Consent Decree" (D. Id. 2011).

³² See Southeast Idaho Selenium Project, "Update: Phosphate Mine Site Investigations and Cleanup in Southeast Idaho" (May 2016), *available at* <https://www.deq.idaho.gov/media/60178549/phosphate-mine-site-investigations-cleanup-southeast-idaho-fact-sheet.pdf>; *see also* *In re P4 Production, LLC*, "Consent Order" (2012).

³³ See Southeast Idaho Selenium Project, "Update: Phosphate Mine Site Investigations and Cleanup in Southeast Idaho" (May 2016), *available at* <https://www.deq.idaho.gov/media/60178549/phosphate-mine-site-investigations-cleanup-southeast-idaho-fact-sheet.pdf>.

³⁴ See *In re P4 Production, LLC*, "Consent Order," at ¶ 25 (2012).

³⁵ 2012 GAO Phosphate Mining Report at 41.

³⁶ *Id.* ((\$4.5 million in corporate guarantees/\$91 million in financial assurance) x 100% = 4.9 percent).

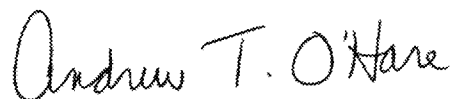
³⁷ See TFI's 2017 Comments at 9-27.

phosphate mining “presents a substantial risk of injury” and “[has] cost agencies millions in health assessment and cleanup costs.”³⁸ As set forth in detail in TFI’s comments, EPA’s rulemaking record supports the exclusion of phosphate mining from any final rule because it does not present a “high risk” and is more like the 59 sectors proposed for exclusion from the rulemaking.³⁹ Similarly, although agencies have incurred oversight costs, these costs have been reimbursed by the responsible owners/operators. Thus, the RTOC’s 2017 Comments do nothing to support the inclusion of phosphate mines as “high risk” HMFs.

CONCLUSION

TFI appreciates your consideration of these additional comments on the Proposed Rule. Nothing in other parties’ comments submitted to the administrative record alters TFI’s position that EPA should explicitly recognize in the final rule that (1) the phosphate and potash sectors do not represent the “highest” risk, (2) any risks in these sectors are already adequately addressed by federal, state, or local requirements and RCRA consent decrees (for phosphoric acid manufacturing facilities), and, therefore, the Agency should clearly exclude these sectors in the regulatory text of the final rule. Please contact me at Ex. 6 or by email at aohare@tfi.org, with any questions.

Sincerely,



Andrew T. O’Hare
Vice President, Public Policy

³⁸ RTOC’s 2017 Comments at 3.

³⁹ EPA Memorandum re: “Mining Classes Not Included in Identified Hardrock Mining Classes of Facilities” (June 29, 2009) (Dkt. EPA-HQ-SFUND-2009-0265-0033 and EPA-HQ-SFUND-2015-0781-0303); *see* TFI’s 2017 Comments at 9-27.

Message

From: Hale, Michelle [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CB99F5247AB8412FA017133839301FEE-HALE, MICHE]
Sent: 3/10/2017 7:11:09 PM
To: John Bode [JBode@corn.org]
CC: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Keniece Barbee [kbarbee@corn.org]; Christina Martin [cmartin@corn.org]; Kyle Harris [kharris@corn.org]
Subject: RE: Meeting request for Administrator Pruitt

Perfect. Thank you for the information.

From: John Bode [mailto:JBode@corn.org]
Sent: Friday, March 10, 2017 1:53 PM
To: Hale, Michelle <hale.michelle@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Keniece Barbee <kbarbee@corn.org>; Christina Martin <cmartin@corn.org>; Kyle Harris <kharris@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Michelle,

Per my discussion with Byron this afternoon, I am inviting animal agriculture interests to join us for the Ag Leaders meeting with Administrator Pruitt at 3:45 pm on Monday. A representative from the following four additional groups will be invited

Newtrient (representing dairy industry waste issues)
National Cattlemen's Beef Association
National Pork Producers Council
National Chicken Council

With a couple of tweaks, the previously reported attendee list of seven has been confirmed:

Chris Novak, CEO National Corn Growers
Steve Censky, CEO American Soybean
Jay Vroom, CEO CropLife
Chuck Conner, CEO Coops Council
Dale Moore, Exec. Director, American Farm Bureau Federation
John Bode, CEO Corn Refiners Association (Kyle Harris to accompany John)

Christina Martin, EVP of the Corn Refiners Association, is copied. Christina would be pleased to coordinate communications. Thanks.



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode
Sent: Wednesday, March 8, 2017 4:50 PM
To: 'Hale, Michelle' <hale.michelle@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Keniece Barbee <kbarbee@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Thanks Michelle. Byron, Keniece will suggest some times for a call.

A handwritten signature of John W. Bode in black ink.

John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Hale, Michelle [<mailto:hale.michelle@epa.gov>]
Sent: Wednesday, March 8, 2017 4:46 PM
To: John Bode <JBode@corn.org>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Meeting request for Administrator Pruitt

Yes, I believe that Byron Brown would be a good person to talk with prior to the meeting on Monday. I am copying Byron on this email to connect you. See you on Monday!

Michelle

From: John Bode [<mailto:JBode@corn.org>]

Sent: Wednesday, March 8, 2017 4:28 PM

To: Hale, Michelle <hale.michelle@epa.gov>

Cc: Keniece Barbee <kbarbee@corn.org>; Kyle Harris <kharris@corn.org>

Subject: RE: Meeting request for Administrator Pruitt

Michelle,

I was hoping to have a brief telephone conversation with someone supporting Administrator Pruitt regarding the ag leaders meeting with him on Monday. Might you be so kind as to direct me to the appropriate person?



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.

Suite 950

Washington, DC 20006

Direct: Ex. 6

Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode

Sent: Wednesday, March 1, 2017 8:22 AM

To: 'Hale, Michelle' <hale.michelle@epa.gov>

Cc: Keniece Barbee <kbarbee@corn.org>; Kyle Harris <kharris@corn.org>

Subject: RE: Meeting request for Administrator Pruitt

Thanks Michelle. I have confirmed that 3:45 pm, on Monday, March 13 works for my group. We appreciate the quick response to our request. I will look forward to hearing from you or others regarding a quick pre-meeting discussion of objectives and topics. Best regards.



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode
Sent: Tuesday, February 28, 2017 3:45 PM
To: 'Hale, Michelle' <hale.michelle@epa.gov>
Cc: Keniece Barbee <kbarbee@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Thanks Michelle. I will quickly check with my group to confirm, but I don't expect a problem.

As convenient for you, I would appreciate a pre-meeting discussion with staff supporting Administrator Pruitt to ensure there are no surprises and to discuss meeting objectives.

A handwritten signature in black ink, appearing to read "John Bode".

John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Hale, Michelle [<mailto:hale.michelle@epa.gov>]
Sent: Tuesday, February 28, 2017 3:00 PM

To: John Bode <JBode@corn.org>

Subject: Meeting request for Administrator Pruitt

Hello, John. I am following up on your request for a meeting between agriculture leaders and EPA Administrator Scott Pruitt. Would March 13 at 3:45 p.m. work for your group?

Thank you for your consideration.

Michelle Hale
Executive Assistant to the Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW,
WJCS, Suite 3000
Washington, D.C. 20460
(202) 564-1430

Confidentiality Warning: This message and any attachments are intended only for the use of the recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of all or any portion of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return email and delete this message and any attachments from your system.

Message

From: John Bode [JBode@corn.org]
Sent: 4/12/2017 10:05:08 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
CC: Kyle Harris [kharris@corn.org]
Subject: Re: Biogenic CO2

Thanks!

Dictated on my iPhone

On Apr 12, 2017, at 4:47 PM, Brown, Byron <brown.byron@epa.gov> wrote:

I am checking whether it is the air person or someone else.

From: John Bode [<mailto:JBode@corn.org>]
Sent: Wednesday, April 12, 2017 2:23 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Kyle Harris <kharris@corn.org>
Subject: RE: Biogenic CO2

Byron,
Hoping that you might direct me to the appropriate person to address the biogenic CO2 issue.

On April 5, during the Ag America lunch, I brought the Biogenic CO2 issue to the attention of Administrator Pruitt. Naturally, he was highly engaged and expressed an eagerness to address the issue. I gave my card to a lady who was accompanying the Administrator to the meeting. She did not yet have a card and I did not catch her name. She promised to send me a note so that we may follow up, but I have not heard from her. Might you direct me to the appropriate person?

<image001.png>
John W. Bode
President & CEO
Corn Refiners Association

<image002.png>

1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode
Sent: Tuesday, March 21, 2017 5:01 PM
To: 'Brown, Byron' <brown.byron@epa.gov>

Cc: Kyle Harris <kharris@corn.org>

Subject: Biogenic CO2

Byron,

Thanks again for meeting with ag leaders last Monday, March 13th. From our perspective, it was a great meeting.

This is a reminder of our interest in a meeting of the parties regarding the Biogenic CO2 Coalition's legal challenge to EPA's Finding that "Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare." A motion to govern future proceedings is due by March 30, 2017, though we would be open to seeking a delay. We are challenging the Obama Greenhouse Gas Regulations' assertion that EPA is not required to consider the "source" of feedstocks (whether fossil or biomass) that result in emissions and that biogenic emissions have the same effect on the atmosphere as fossil fuels, despite an absence of mention of biogenic CO2 in the Endangerment Finding.

Please advise if and when appropriate officials of EPA would be available to discuss this and, perhaps, our two other challenges of EPA rules in connection with treatment of biogenic CO2 under the greenhouse gas endangerment finding.

Thanks for your consideration.

<image001.png>

John W. Bode
President & CEO
Corn Refiners Association

<image002.png>

1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

Message

From: Andy O'Hare [aohare@tfi.org]
Sent: 3/31/2017 7:24:09 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Invitation
Attachments: Administrator Pruitt Invitation 3-17.pdf

Bryon,

Good afternoon.

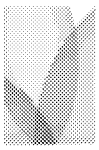
Chris Jahn and I had a conversation this afternoon regarding the meeting you had with the Ag association CEOs yesterday. He told me he mentioned the invitation TFI has extended to the Administrator to address a TFI gathering in September. He suggested that I send a copy to your attention. We would very much appreciate participation by Mr. Pruitt in our fall meeting.

Please reach out with any questions.

Regards,
Andy O'Hare

Andrew T. O'Hare, CAE
Vice President, Public Policy
The Fertilizer Institute
425 Third Street, SW
Suite 950
Washington, DC 20024

Ex. 6 (work)
(cell)
aohare@tfi.org



The Fertilizer Institute

Nourish, Replenish, Grow

March 7, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt,

Congratulations on your confirmation by the Senate to be the Administrator of the Environmental Protection Agency. We believe your considerable experience addressing complex environmental issues will be a real asset to the agency and the nation.

The Fertilizer Institute (TFI) invites you to deliver the keynote address at our World Fertilizer Conference on September 18 and 19, 2017 in Washington, DC at the Marriott Marquis hotel. We anticipate more than 700 attendees at this event, with a significant number coming from nations around the world. The group would welcome the opportunity to learn how you plan to take the agency in a new direction to address the complexities of the federal environmental regulatory system.

TFI represents fertilizer manufacturers, transporters, wholesaler, brokers and retailers, all of whom are impacted by the policies, programs and regulations of the agency. s members provide nutrients that are responsible for nearly half of a crop's yield, helping to ensure a stable and reliable food supply. The fertilizer industry supports nearly 500,000 American jobs and has an economic impact of over \$150 billion annually.

We would be delighted if you were able to join us in September. Please let me know what additional information you may need regarding this upcoming event. I may be reached at cjahn@tfi.org or (202) 962-0490. Thank you for your consideration.

Sincerely,

Chris Jahn
President

The Fertilizer Institute
425 Third Street, S.W., Suite 950
Washington, DC 20024
(202) 962-0490
www.tfi.org

Message

From: Andy O'Hare [aohare@tfi.org]
Sent: 8/22/2017 9:21:24 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: FDEP Comments
Attachments: 08-19 FDEP-CERCLA Letter to EPA.pdf

Byron,

Attached are the comments of the Florida DEP, which actually predate the CERCLA proposal, but certainly give you a flavor of their perspective.

Regards,
Andy



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

August 19, 2016

Linda Barr, Office of Resource Conservation and Recovery
Barnes Johnson, Director, Office of Resource Conservation and Recovery
United States Environmental Protection Agency
Attention: Docket ID Nos. EPA-HQ-SFUND-2009-0265
and EPA-HQ-SFUND-2009-0834
Mailcodes 5305T and 5301P
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Barr.Linda@epa.gov
Johnson.Barnes@epa.gov

RE: Florida Department of Environmental Protection - Federalism Consultation Comments
CERCLA Section 108(b) Docket ID No. EPA-HQ-SFUND-2009-0265 and EPA-HQ-SFUND-2009-0834

The Florida Department of Environmental Protection (Department) is the executive agency for the State of Florida with primary responsibility for implementing land reclamation, surface water, ground water and related environmental protections for phosphate mining and associated land reclamation activities. The Department is also responsible for ensuring cleanup and rehabilitation of sites contaminated with hazardous substances within the state, and for implementing related programs to prevent pollutant discharges and to control exposure and potential risk of exposure to humans and the environment.

The Department appreciates the opportunity to comment on the Office of Resource Conservation and Recovery (ORCR) efforts to develop appropriate and enforceable financial responsibility requirements under the authorities of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These comments on EPA's planned rulemaking share details about our concerns with inaccurate risk information that is referenced in the rulemaking's supporting documentation, and the potential for adverse impacts to and preemption of existing state regulatory requirements for phosphate mining in Florida. Our comments also provide you with input for your Federalism Consultation as requested in the July 7, 2016, "CERCLA 108(b) Proposed Rulemaking for Hardrock Mining," call with states.

It is our understanding that EPA is considering including phosphate mining in Florida under proposed regulations that would require financial responsibility for hardrock mining industries,

and that EPA is required to publish a proposed rule by December 1, 2016¹. The Department appreciates the ORCR's intent to ensure that financial responsibility requirements are provided to address risks from hazardous substances. However, the Department has critical concerns about the decision making basis to include Florida phosphate mining with hardrock mining, and the similar overlap with and preemption of state regulations that are currently providing environmental protections and financial assurances. Such preemption could lead to a reduction in protections for Floridians.

Inclusion of Florida phosphate mining in EPA's financial assurance requirements for the hardrock mining industry would be based on a misunderstanding of and confusion about operations for phosphate extraction, beneficiation, and processing in Florida. Phosphate mining in Florida is not "hardrock mining," nor are the operations and actual risks sufficiently similar to warrant EPA's inclusion under regulations specifically designed to address hardrock mining concerns.

The Department has discovered that relevant supporting information in EPA's records related to operations and risks is inaccurate and mischaracterizes phosphate mining in Florida. Importantly, any risks that do exist, particularly with respect to related mineral processing facilities, are already comprehensively addressed in Florida by a unique combination of existing state and federal laws and regulatory actions.

In addition, inclusion of Florida phosphate mining in the proposed rules presents federalism concerns by interfering with the state's right to implement effective environmental protection programs, and could specifically preempt state's rights given the provisions under Section 114(d) of CERCLA. Given our discovery of the fundamental misunderstanding of operations and associated risk in EPA's supporting information, and our concerns regarding unintended impacts to Florida's laws and existing protections, direct consultation with the Department is warranted and should be done in advance of any proposal of CERCLA financial responsibility rules for any mining activities in Florida.

Attached are Florida's comments summarizing the concerns we have identified to date. Our general comments are included in Attachment A. Attachment B offers comments in response to the questions provided in EPA's July 7, 2016, call with States as part of the Federalism Consultation.

We hope these comments are informative. We appreciate the intent of the proposed rulemaking to provide protections for cleanup liability and related hazardous substance response actions. In this case, we believe that the proposed rule simply is not warranted in Florida, and could negatively impact the comprehensive and rigorous existing requirements under state and federal programs that are currently providing important environmental protections and benefits in this

¹ EPA slides from May 17, 2016, webinar on, "CERCLA Section 108(b) Financial Responsibility," for hardrock mining, from <https://www.epa.gov/superfund/superfund-financial-responsibility>, July 2016.

Federalism Consultation Comments

CERCLA Section 108(b) Docket ID No. EPA-HQ-SFUND-2009-0265 and EPA-HQ-SFUND-2009-0834

Florida Department of Environmental Protection

August 19, 2016

Page 3

state. If you have any questions on these comments, please contact me at your convenience at

Ex. 6

or by email at john.coates@dep.state.fl.us.

Sincerely,



John A. Coates, P.E., Director
Division of Water Resource Management
Florida Department of Environmental Protection

Attachments: As noted.

cc: Sonya Sasseville, Director, EPA ORCR
Anna Krueger, EPA ORCR
Paula Cobb, Deputy Secretary, Regulatory Programs, FDEP
Joseph Ullo, Director, Division of Waste Management, FDEP
Franklin Hill, Director, Superfund Division, EPA Region 4
Anita Davis, Enforcement Branch Chief, Superfund Division, EPA Region 4

The Florida Department of Environmental Protection (Department) offers the following general comments and preliminary observations in response to the requested Federalism Consultation:

Inaccurate Information on Risk and Conclusions

- EPA appears to be preparing to regulate phosphate mining in Florida as a type of hardrock mining. The Department strongly believes that this classification is not technically supportable, and is based on a fundamental misunderstanding of Florida phosphate mining and mineral processing risks. The Department also believes it will lead to unintended consequences that could weaken and frustrate Florida's efforts to ensure that phosphate mining in Florida is accountable for both land reclamation obligations, and for operating in a manner that protects our state's land and water resources. Phosphate mining in Florida is conducted by excavation of pebble phosphate deposits and does not involve many of the activities that are primarily associated with the hardrock mining industry. It is critical that EPA acknowledge that phosphate mining in Florida does not involve those activities such as blasting, and in-situ chemical treatments that are often relevant to the evaluation of risk for those activities commonly associated with the hardrock mining sites.
- EPA's 2009 Federal Register (FR) Notice (74 FR 37213) relied on information in an earlier 2004 EPA Office of Inspector General Report that provided background information for EPA's proposed nationwide identification of hardrock mining sites and associated risks² (2004 Report). The underlying information is unfortunately incorrect in regards to phosphate mining in Florida. Please note the following concerns:
 - A review of EPA's agency responses in the 2004 Report indicates that there was an incorrect belief that there is a "likelihood of acid mine drainage" at phosphate mining sites in Florida. This represents a critical misunderstanding about these mining sites in Florida. There is no amount or potential for acid mine drainage given the nature of the pebble phosphate deposits that occur and are mined in Florida. Accordingly, any conclusions about potentially elevated risks due to the erroneous conclusion that there is a "likelihood of acid mine drainage" at Florida phosphate mining sites is factually incorrect. As stated previously, phosphate mining in Florida is not hardrock mining and does not involve many of the operations that would commonly be associated with such activities. This is a significant difference where Florida phosphate mining does not have the particular

² See "Evaluation Report, Nationwide Identification of Hardrock Mining Sites," Report No. 2004-P-00005, March 31, 2004, United States Environmental Protection Agency Office of Inspector General.

- risks that may otherwise be associated with true hardrock mining operations, and as such warrants EPA's reconsideration of whether or not to incorporate Florida phosphate mining in regulations intended for the hardrock mining industry.
- This incorrect information led to additional false conclusions in the 2004 Report, including the belief that hazardous substance related cleanup costs at each phosphate mining site could be on the order of \$100 million or more because of the false expectation that there could be acid mine drainage at each of these mines in Florida. Since acid mine drainage is not a possibility, let alone a risk at Florida phosphate mines, assigning risk and any associated cost liability for cleanup of acid mine drainage and any associated hazardous substances responses is fundamentally incorrect.
 - Finally, the 2004 Report inappropriately attributes these costs to 22 phosphate mining sites that were then identified in EPA's inventory for Florida, indicating that the total for cleanup costs could range from \$2.2 to \$11 billion, a difference of \$8.8 billion between the low and high end according to EPA's analysis. In reality, there is essentially zero risk and no associated liability for acid mine drainage at Florida phosphate mining sites.
 - The plans for proposed rules would also cover beneficiation of phosphate in Florida. However, it is not apparent on review of the underlying information sources referenced in EPA's July 9, 2009 Notice whether EPA has properly evaluated existing information that evaluates the relative risk of phosphate beneficiation in Florida. The Department has conducted its own studies related to the potential or release of hazardous substances from phosphate beneficiation facilities. The Department encourages EPA to further discuss and review this information to better understand the low level of risk and current regulations that are applied to these activities in Florida.

Direct Conflicts with State and Other Federal Laws Relating to Hazardous Substances

- EPA's plans to promulgate CERCLA 108(b) financial assurance regulations for extraction, beneficiation, and processing of phosphate as part of regulations for the hardrock mining industry would adversely impact both state laws and federal requirements related to protections for liability connected to the release of a hazardous substance.
- CERCLA Section 114(d) provides that an owner or operator of a facility which establishes and maintains evidence of financial responsibility under section 108(b) cannot be required under state law, "to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance..." The Department is gravely concerned that EPA's planned rulemaking could adversely impact Florida's state laws, and our existing environmental protections related to such financial responsibility requirements.

- The phosphoric acid processing (aka, mineral processing) facilities in Florida, are separate and distinct operations from phosphate mining sites. Indeed, these mineral processing facilities do have the potential for releases of hazardous substances; however, they are significantly fewer in number and size than phosphate mining sites. As a result of the potential for release of hazardous substances, these mineral processing facilities have been extensively regulated under Florida laws including Sections 403.4154 and 403.4155, F.S. Regulations implemented under these laws include extensive construction, operational, closure and associated financial responsibility obligations under Department rules that are focused on preventing and addressing the liabilities related to potential releases of hazardous substances. Establishment of an overlapping and duplicative CERCLA financial responsibility obligation would at least cause an unnecessary regulatory burden on the State of Florida and the Department when having to resolve conflicts between state and duplicative federal requirements for the same purpose. At worst, the state's existing regulatory programs could be severely restricted or pre-empted by the provisions of CERCLA Section 114(d).
- As correctly noted in the 2004 Report, the State of Florida did determine that its then existing financial assurance requirements needed strengthening after the 2001 bankruptcy of a company that mined and processed phosphate in Florida. In 2005, the State of Florida completed that rulemaking and adopted revised state financial assurance rules that strengthened requirements for financial responsibilities including important provisions to provide more accurate cost estimates for treating hazardous substances and nutrients in acidic process water at these facilities. The Department has not found any evidence in the record to suggest that EPA has reviewed or had any concerns with Florida's revised regulations for financial assurances. Most importantly, without such review, EPA would not be able to accurately evaluate risk for the Florida phosphate mineral processing in the absence of the planned CERCLA Section 108(b) financial responsibility rulemaking.
- In Florida, the mined phosphate rock is utilized in separate phosphoric acid and fertilizer manufacturing facilities where acidic process water is stored and reused in open impoundments. It is apparent that the 2004 Report incorrectly attributed the potential for releases of acidic process water to phosphate mining sites when the consideration would only be relevant for the separate mineral processing facilities. The 2004 Report does not appear to properly differentiate between potential risks at phosphate mining sites and those applicable to mineral processing facilities. This misunderstanding is critical since hazardous substance risks at the mineral processing facilities have already been addressed by state rules and are also addressed by actions being taken under EPA's National Enforcement Initiative for Mining and Mineral Processing. During the intervening 12 years since the time of the 2004 Report, EPA's Resource Conservation and Recovery Act (RCRA) program staff in Region 4 and EPA Headquarters have been extensively engaged in federal regulatory activities under EPA's RCRA National Enforcement Initiative for Mining and Mineral Processing. As a results of those activities, EPA and the Department have been negotiating RCRA settlements related to the operational, closure, and financial

assurance requirements that are also directly, “in connection with liability for the release of a hazardous substance,” as referenced under Section 114(d) of CERCLA. Both Florida and EPA are parties to the settlements that have been reached to date in Florida. As a result of these settlements under federal RCRA regulations, there is already both state and federal regulatory oversight and financial assurance requirements covering the potential for related hazardous substance releases. Accordingly, efforts to include Florida phosphate mining in the upcoming CERCLA financial assurance rulemaking would be duplicative, is unnecessary to effect further environmental protection, and potentially frustrates and preempts the effectiveness of existing state and federal regulatory programs designed to address the potential hazardous substance releases and financial responsibilities for the referenced mineral processing facilities. Accordingly, efforts to include Florida phosphate mining in the upcoming CERCLA financial responsibility rulemaking would be duplicative, is unnecessary to effect further environmental protection, and potentially frustrates and preempts the effectiveness of existing state and federal regulatory programs designed to address the potential hazardous substance releases and financial responsibilities for the referenced mineral processing facilities. The Department believes that EPA should update the 2004 Report to correct inaccurate Florida specific information and to address relevant Florida developments that occurred since 2004, particularly if EPA chooses not to reconsider the risk factors as discussed in our comments. The Department is available for direct consultation and believes such is warranted prior to publication of any proposed rule that would include mining activities in Florida.

- We have serious concerns that EPA’s plan to include Florida phosphate mining in the CERCLA section 108(b) rulemaking will undermine the Department’s ability to enforce state regulatory programs in accordance with related settlement agreements. The most recent settlement under EPA’s National Enforcement Initiative for Mining and Mineral Processing (Civil Action No. 8:15-cv-0286-JDW-TBM) was just entered by the United States District Judge for the Middle District of Florida on August 5, 2016, and includes important provisions for Florida to act under related state law provisions. The Department notes that because of Section 114(d) of CERCLA, where an owner or operator would be required under CERCLA to establish evidence of financial responsibility in accordance with section 108(b), such an owner or operator could not be required under any state or local law “to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility.” The settlements under EPA’s National Enforcement Initiative for Mining and Mineral Processing in Florida each contain carefully negotiated provisions that bind the United States and the Department, and which rely heavily on the Department’s ability to implement state laws and regulations related to the potential release of hazardous substances from these mineral processing facilities. EPA’s plans to include Florida phosphate mining in the CERCLA financial responsibility rulemaking may very well preempt Florida’s ability to effectively implement state laws

that are incorporated into these settlements for the facilities covered thereunder, and preempt implementation of state regulations at similar facilities that are not covered under the settlements.

Relationship to Other State Regulations that also Relate to Hazardous Substance Risks at Mining Sites

- Florida's Environmental Resource Permitting (ERP) requirements are applicable to any new phosphate mining and phosphate reclamation areas in the state. The statutory and regulatory requirements under the state's ERP program (see Part IV, Chapter 373, F.S., and Chapter 62-330, F.A.C.) are extensive and require critical water quality protections for both surface water and ground waters in the state. As such, both phosphate mining activities and mandatory reclamation activities are required to be planned and implemented in a manner that does not violate the state's water quality standards, including those for hazardous substances, for both surface water and ground water. Accordingly, the combination of state mandatory mine reclamation and state water resource protections are already in place for any newly permitted mining activities, and work to ensure that hazardous substances are not a significant or meaningful risk for phosphate mining in Florida.
- In accordance with Part II, Chapter 378, F.S., and Chapter 62C-16, F.A.C., new lands mined for phosphate after July 1, 1975, and after July 1, 1984 for lands used for clay settling areas, are subject to mandatory reclamation requirements. As such, they are also subject to corresponding financial responsibility requirements designed to ensure that reclamation activities are completed in a timely manner. Since the application of these state reclamation and financial responsibility requirements also addresses the potential for hazardous substance related risks through state permitting requirements, additional financial responsibility to address hazardous substance related liabilities is unnecessary in Florida for such new mining or reclamation areas. In addition, the Department is very concerned that imposition of CERCLA financial responsibility requirements for phosphate mining in Florida would potentially interfere with or preempt the state's phosphate reclamation financial responsibility requirements.
- The ORCR's inclusion of Florida phosphate mining in the rule to be proposed for the hardrock mining industry would also appear to be duplicative of state laws intended to address liabilities and damages for the release of hazardous substances, including financial responsibility provisions for facilities under Sections 376.308 and 376.309, F.S., and additional liability provisions under Section 403.727, F.S.
- Although EPA's rulemaking is intended to be forward looking, the imposition of CERCLA financial responsibility rules is also unnecessary to address reclamation activities that would be done in the future, on lands that were mined for phosphate prior to the state's mandatory reclamation requirements that first became effective in 1975.

Florida's legislatively established program continues to provide state funding from a portion of Florida's phosphate severance taxes for the purpose of funding reclamation of those historically mined lands so that they may be returned to beneficial uses (see Part I, Chapter 378, F.S., and Chapter 62C-17, F.A.C.). The applicable regulatory requirements include provisions specifically for addressing applicable water quality standards, and any health or safety hazards on the land. In addition, reclamation done under this existing state funding program is also required to be conducted in accordance with the ERP regulatory criteria that require compliance with state surface water and ground water quality criteria. Therefore, these regulations also require that any risks from hazardous substances also be addressed as part of state funded reclamation on pre-1975 phosphate mined lands. Accordingly, Florida's regulatory programs address both historical and current mining related operations.

Attachment B

Responses to Selected EPA Federalism Consultation Questions

Florida Department of Environmental Protection

Federalism Consultation Comments - CERCLA Section 108(b) Docket ID No. EPA-HQ-SFUND-2009-0265 and EPA-HQ-SFUND-2009-0834

Page 1

The responses below are provided by the Florida Department of Environmental Protection (Department) in an attempt to provide constructive input specifically related to the actual environmental circumstances and existing regulatory programs that are being implemented in Florida for phosphate mining. We encourage EPA to consult further with the Department prior to any proposal of rules for the hardrock mining industry, if EPA intends to include Florida phosphate mining, beneficiation, or processing in the proposed rules.

1. Since states have raised concerns about potential preemption or duplication of state hardrock mining financial assurance requirements, we would like to give you the opportunity to discuss those concerns with us, or any other concerns with or questions about the CERCLA 108(b) hardrock mining financial assurance rulemaking. We are forwarding letters we received regarding the CERCLA Section 114(d) preemption provision, from the states of Alaska, Arizona, Colorado, and New Mexico in 2011, and would like to give the state participants an opportunity to elaborate on or discuss current state thinking on this issue.

Florida has provided information related to these concerns in our general comments in response to the requested Federalism Consultation. Based on our review of the relevant information, we strongly recommend that additional and direct consultation is needed with the Department to provide a full understanding of the level of risk associated with Florida phosphate mining, beneficiation, and processing operations, particularly given the interplay of exiting state and federal regulatory actions in this state.

2. How do your programs apply on mines located on land with shared federal-state ownership?

Florida has extensive regulatory programs that apply to extraction activities, beneficiation, associated mineral processing facilities, and to corrective actions in response to releases of hazardous substances. These programs apply regardless of ownership type. Our general comments show the interdependence of our regulatory programs that have a connection with the release of hazardous substances in Florida.

3. How does your state approach spills or releases of hazardous substances from a mining site? Does your state require financial responsibility specifically for such releases?

The Department's laws under Chapter 376, F.S., and Chapters 62-780 and 62-777, F.A.C., are applicable to any releases of hazardous substances, including those from a mining site in Florida. In addition, the regulations cited in our general comments, in conjunction with additional regulatory authorities implemented under our state's authorized Resource Conservation and Recovery Act (RCRA) and Clean Water Act National Pollutant Discharge Elimination System (NPDES) permitting programs are also

Attachment B
Responses to Selected EPA Federalism Consultation Questions
Florida Department of Environmental Protection
Page 2

utilized to regulate potential sources of pollutants, including hazardous substances, at mining extraction, beneficiation, and processing facilities in Florida.

4. What reporting requirements do you have for mining facilities, either related to mine operations or maintenance of their financial instruments? Do you have any difficulties with compliance with these requirements?

Reporting requirements apply to each of the required state regulatory programs that are referenced in the Department's general comments and in these question responses. The Department relies on these reporting requirements in conjunction with our various regulatory inspections programs and do not have any unaddressed or overriding difficulties with compliance with these requirements.

5. How frequently has your state needed to take enforcement actions against a mining entity for violations relating to financial assurance? How would you characterize the types of violations that trigger enforcement?

The Department closely oversees and ensures compliance with applicable requirements for financial assurance. With respect to financial responsibility related to hazardous substances at phosphate mineral processing facilities, the Department has issued three orders since the state financial assurance requirements were strengthened in 2005, not including the referenced mineral processing settlements that were discussed for the Florida phosphate industry in our general comments.

6. Does your state require third party certification for assessing mine site features or to verify the calculation of cost estimates related to your state programs? If so, we would be interested in hearing about your experience with these approaches.

The Department requires that cost estimates be certified by a third party engineer in relation to financial responsibility for phosphate related mineral processing facilities in Florida. The Department would be happy to further discuss any questions with EPA.

7. What is your experience with Environmental Management Systems, ISO certification, third party inspection programs, or similar types of programs in reducing risk from mining operations?

The Department does not currently rely on Environmental Management Systems, or ISO certifications in its regulatory programs. Our regulations often require inspections by a qualified and licensed professional engineer where appropriate for compliance and safety related evaluations.

Message

From: Ed Thomas [ethomas@tfi.org]
Sent: 5/15/2017 2:25:56 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: CERCLA Financial Assurance for Hard Rock Mining

Byron:

I attended a roundtable with Samantha Dravis last week and brought up the issue of exempting phosphate and potash mines from the CERCLA Financial Assurance for Hard Rock Mining Rule. She indicated that you were working hard on the issue. Also, I believe you have been in communication with my colleague here at The Fertilizer Institute, Andy O'Hare, regarding the issue.

I know you are swamped and have extremely limited time, but I was hoping that Andy and I could grab a cup of coffee and chat about the progress and next steps that EPA is considering. We would limit the discussion to 10 minutes to respect your time. I really appreciate all your hard work. I have not been this excited about a President in my entire career. We really have the opportunity to make meaningful change....

Please let me know if you may have some time to quickly catch up.

Sincerely, Ed Thomas.

Ed Thomas
Director, Regulatory Affairs
The Fertilizer Institute
425 Third Street, SW Suite 950
Washington, DC 20024

(p) **Ex. 6**
(c)

Message

From: Andy O'Hare [aohare@tfi.org]
Sent: 8/22/2017 7:20:56 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Thank you

Byron,

Thank you for meeting this afternoon with my members and myself on the CERCLA 108 issue. We believe the comments we filed for the record support an exclusion from the scope of the rule for both phosphate and potash. We also believe that a definitive statement supporting a low/no risk finding for these minerals in the final rule preamble would be most helpful and would have the benefit of removing a least one party (TFI) from any future litigation on an eventual final rule. Please let me know if there is any additional information that you believe would be helpful to have in the record to support our desired outcome.

Regarding the other issue I mentioned, it is a reconsideration of the phosphate fertilizer risk and technology review (NESHAP), which was promulgated in August 2015 (80 Fed. Reg. 50386). TFI filed a petition for reconsideration, which EPA agreed to consider and I believe a final rule is now sitting somewhere in the Administrator's office (perhaps under the review of Brittany Bolen). I would appreciate the opportunity to discuss the status of this reconsideration. It would be a rule that could be added to the "de-regulatory" column.

Regards,
Andy O'Hare

Andrew T. O'Hare, CAE
Vice President, Public Policy
The Fertilizer Institute
425 Third Street, SW
Suite 950
Washington, DC 20024

Ex. 6 (work)
(cell)
aohare@tfi.org

Message

From: Chris Bliley [cbliley@growthenergy.org]
Sent: 3/31/2017 1:07:26 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: Re: Introduction

Anytime today is fine if you have a second. Best is my cell Ex. 6

Thanks

On Mar 31, 2017, at 9:05 AM, Brown, Byron <brown.byron@epa.gov> wrote:

I can call you later this morning. What's your number?

From: Chris Bliley [<mailto:cbliley@growthenergy.org>]
Sent: Wednesday, March 29, 2017 3:51 PM
To: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Introduction

Thanks for connecting us. If you have a minute, can I give you a ring?

On Mar 22, 2017, at 11:48 AM, Brown, Byron <brown.byron@epa.gov> wrote:

Hi Chris and Anthony – wanted to introduce you to Tate Bennett, the new Deputy AA for OCIR. She joined EPA from NRECA and previously worked for Leader McConnell in the Senate and in the House.

Tate – Chris and Anthony headed up OCIR toward the end of the Bush Administration and both worked in the House previously.

Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

Message

From: Chris Bliley [cbliley@growthenergy.org]
Sent: 7/6/2017 12:48:51 PM
Subject: Our Statement on the RVOs
Attachments: 7.5.17 - 2018 Proposed RVOs Press Release_Final.pdf

In case you didn't see it yesterday, our statement on the proposed RFS volume obligations is attached.

Chris

Chris Bliley | Vice President, Regulatory Affairs

Growth Energy

701 8th St NW Suite 450

Washington DC 20001

OFFICE **Ex. 6** CELL **Ex. 6**

TWITTER [@GrowthEnergy](https://twitter.com/GrowthEnergy)

FACEBOOK [growthenergy.org/facebook](https://www.growthenergy.org/facebook)

WEBSITE www.growthenergy.org

Confidentiality Notice: The information contained in this e-mail message, including any attachments, is for use by the intended recipient(s) only and contains information that may be legally privileged, confidential, trade secret, proprietary in nature or copyrighted under applicable law. If you are not the intended recipient(s), you are hereby formally notified that any use, disclosure, copying, distribution or the taking of any action in reliance on the contents of this e-mail transmission, in whole or in part, is strictly prohibited. This e-mail transmission does not constitute a consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties. If you are not the intended recipient(s), please promptly notify the sender by reply e-mail and destroy all copies of the original message.



701 8th Street, NW, Suite 450, Washington, D.C. 20001

PHONE 202.545.4000 FAX 202.545.4001

GrowthEnergy.org

FOR IMMEDIATE RELEASE
July 5, 2017

PRESS CONTACT: Chris Hogan 202.545.4025
CHogan@growthenergy.org

Proposed RVOs Signal Administration Holding to Promise of Support for Renewable Fuel Standard, but More Certainty Needed

WASHINGTON, D.C. — Today the Environmental Protection Agency (EPA) released proposed 2018 Renewable Volume Obligations (RVOs) for the Renewable Fuel Standard (RFS). The total renewable fuel volume is proposed to be 19.24 billion gallons, while the proposed conventional biofuel amount of 15 billion gallons maintains the level set in the final RVOs for 2017. The proposal also calls for 4.24 billion gallons of advanced biofuel, including 238 million gallons of cellulosic biofuel.

In response, Growth Energy CEO Emily Skor issued the following statement:

“The release of the proposed RVOs is the first real test of the current administration’s pledged support for renewable fuels, and we are encouraged to see the EPA demonstrate President Trump’s continued commitment to the Renewable Fuel Standard.

“Information from the Department of Energy, as well as from the numerous retailers across the country selling higher biofuel blends, confirm what we’ve known for years – there is no ‘blend wall.’ More and more of America’s drivers are choosing higher biofuel blends, like E15, and fulfilling the promise of the RFS.

“While we are pleased with the EPA and Administration’s commitment to a 15-billion-gallon target for conventional biofuels, we would like to see final levels for cellulosic and advanced biofuels continue to give producers and stakeholders certainty in their investment in second generation technology.

“The RFS is a great American success story: It has helped provide consumers with real choice and savings at the pump, while also strengthening our economy, delivering greater energy independence, and improving our environment.”

###

About Growth Energy

Growth Energy represents producers and supporters of ethanol working to bring consumers better choices at the fuel pump, grow America's economy and improve the environment for future generations. Our organization's national campaign – online at www.GetEthanol.com – serves as the leading source of information for consumers seeking cleaner, more affordable fueling options. For more information on our organization, visit us at www.GrowthEnergy.org, follow us on Twitter [@GrowthEnergy](https://twitter.com/GrowthEnergy), or connect with us on [Facebook](https://www.facebook.com/GrowthEnergy).

Message

From: Brown, Byron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9242D85C7DF343D287659F840D730E65-BROWN, BYRO]
Sent: 4/12/2017 8:47:40 PM
To: John Bode [JBode@corn.org]
CC: Kyle Harris [kharris@corn.org]
Subject: RE: Biogenic CO2

I am checking whether it is the air person or someone else.

From: John Bode [mailto:JBode@corn.org]
Sent: Wednesday, April 12, 2017 2:23 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Kyle Harris <kharris@corn.org>
Subject: RE: Biogenic CO2

Byron,
Hoping that you might direct me to the appropriate person to address the biogenic CO2 issue.

On April 5, during the Ag America lunch, I brought the Biogenic CO2 issue to the attention of Administrator Pruitt. Naturally, he was highly engaged and expressed an eagerness to address the issue. I gave my card to a lady who was accompanying the Administrator to the meeting. She did not yet have a card and I did not catch her name. She promised to send me a note so that we may follow up, but I have not heard from her. Might you direct me to the appropriate person?



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode
Sent: Tuesday, March 21, 2017 5:01 PM
To: 'Brown, Byron' <brown.byron@epa.gov>

Cc: Kyle Harris <kharris@corn.org>

Subject: Biogenic CO2

Byron,

Thanks again for meeting with ag leaders last Monday, March 13th. From our perspective, it was a great meeting.

This is a reminder of our interest in a meeting of the parties regarding the Biogenic CO2 Coalition's legal challenge to EPA's Finding that "Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare." A motion to govern future proceedings is due by March 30, 2017, though we would be open to seeking a delay. We are challenging the Obama Greenhouse Gas Regulations' assertion that EPA is not required to consider the "source" of feedstocks (whether fossil or biomass) that result in emissions and that biogenic emissions have the same effect on the atmosphere as fossil fuels, despite an absence of mention of biogenic CO2 in the Endangerment Finding.

Please advise if and when appropriate officials of EPA would be available to discuss this and, perhaps, our two other challenges of EPA rules in connection with treatment of biogenic CO2 under the greenhouse gas endangerment finding.

Thanks for your consideration.



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

Message

From: Brown, Byron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9242D85C7DF343D287659F840D730E65-BROWN, BYRO]
Sent: 3/9/2017 2:26:43 PM
To: Keniece Barbee [kbarbee@corn.org]; Burley, Veronica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b317a1f564e34528915a2809fe81d832-Burley, Veronica]
CC: Kyle Harris [kharris@corn.org]; Hale, Michelle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cb99f5247ab8412fa017133839301fee-Hale, Miche]
Subject: RE: Meeting request for Administrator Pruitt

I am adding my assistant Veronica to help arrange this. Would prefer one of the times on Friday. Thanks.

From: Keniece Barbee [mailto:kbarbee@corn.org]
Sent: Wednesday, March 8, 2017 4:53 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Kyle Harris <kharris@corn.org>; Hale, Michelle <hale.michelle@epa.gov>; Keniece Barbee <kbarbee@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Hello Byron,

Here are sometimes available on John Bode's calendar. If these times do not work, please let me know and I will do what I can to accommodate.

Thursday March 9th: 1:30 -2:00PM EST OR between 3:30 to 5:00PM

Friday March 10th : 9:30 to 10:00AM or 1-3:00PM EST.

Thank you!

Regards,

Keniece Barbee
Assistant to President and C.E.O.
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Main: (202) 331-1634
Direct: Ex. 6
Fax: (202) 331-2054
www.corn.org

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode
Sent: Wednesday, March 8, 2017 4:48 PM
To: Hale, Michelle <hale.michelle@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Keniece Barbee <kbarbee@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Thanks Michelle. Byron, Keniece will suggest some times for a call.



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Hale, Michelle [<mailto:hale.michelle@epa.gov>]
Sent: Wednesday, March 8, 2017 4:46 PM
To: John Bode <JBode@corn.org>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Meeting request for Administrator Pruitt

Yes, I believe that Byron Brown would be a good person to talk with prior to the meeting on Monday. I am copying Byron on this email to connect you. See you on Monday!
Michelle

From: John Bode [<mailto:JBode@corn.org>]
Sent: Wednesday, March 8, 2017 4:28 PM
To: Hale, Michelle <hale.michelle@epa.gov>
Cc: Keniece Barbee <kbarbee@corn.org>; Kyle Harris <kharris@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Michelle,

I was hoping to have a brief telephone conversation with someone supporting Administrator Pruitt regarding the ag leaders meeting with him on Monday. Might you be so kind as to direct me to the appropriate person?



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: **Ex. 6**
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode
Sent: Wednesday, March 1, 2017 8:22 AM
To: 'Hale, Michelle' <hale.michelle@epa.gov>
Cc: Keniece Barbee <kbarbee@corn.org>; Kyle Harris <kharris@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Thanks Michelle. I have confirmed that 3:45 pm, on Monday, March 13 works for my group. We appreciate the quick response to our request. I will look forward to hearing from you or others regarding a quick pre-meeting discussion of objectives and topics. Best regards.



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: **Ex. 6**
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: John Bode
Sent: Tuesday, February 28, 2017 3:45 PM
To: 'Hale, Michelle' <hale.michelle@epa.gov>
Cc: Keniece Barbee <kbarbee@corn.org>
Subject: RE: Meeting request for Administrator Pruitt

Thanks Michelle. I will quickly check with my group to confirm, but I don't expect a problem.

As convenient for you, I would appreciate a pre-meeting discussion with staff supporting Administrator Pruitt to ensure there are no surprises and to discuss meeting objectives.



John W. Bode
President & CEO
Corn Refiners Association



1701 Pennsylvania Avenue, N.W.
Suite 950
Washington, DC 20006
Direct: Ex. 6
Main: (202) 331-1634

This message and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Hale, Michelle [<mailto:hale.michelle@epa.gov>]
Sent: Tuesday, February 28, 2017 3:00 PM
To: John Bode <JBode@corn.org>
Subject: Meeting request for Administrator Pruitt

Hello, John. I am following up on your request for a meeting between agriculture leaders and EPA Administrator Scott Pruitt. Would March 13 at 3:45 p.m. work for your group?

Thank you for your consideration.

Michelle Hale
Executive Assistant to the Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW,
WJCS, Suite 3000
Washington, D.C. 20460
(202) 564-1430

Confidentiality Warning: This message and any attachments are intended only for the use of the recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of all or any portion of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return email and delete this message and any attachments from your system.